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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's) WT Docket No. 97-82
Rules Regarding Installment)
Payment Financing For Personal)
Communications Services (PCS))
Licensees)

PETITION FOR RECONSIDERATION

Alpine PCS, LLC; Eldorado Communications, L.L.C.; Mercury PCS, LLC; and KMTel, L.L.C. (the "C Block Licensees"),^{1/} by their attorneys and pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. §1.429, respectfully request reconsideration of several aspects of the Order on Reconsideration of the Second Report and Order ("Reconsideration Order") in the above-captioned proceeding.^{2/} Specifically, the C Block Licensees urge the Commission to revise its rules in order to (a) provide that all C Block licensees are provided with an option to have the debt that they owe to the federal government be reduced so that it equals the debt of GWI PCS, Inc. ("GWI"), on a pro rata basis, as recently reduced by a federal bankruptcy judge^{3/}; (b) to postpone both the

^{1/} As each of these parties is a C block licensee, each is clearly a party in interest with standing to comment in this proceeding.

^{2/} Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licenses, Second Report and Order, WT Docket No. 97-82, FCC 98-46, 63 Fed. Reg. 17111 (Apr. 8, 1998) ("Reconsideration Order").

^{3/} In re GWPCS, Inc., Debtor, Bankr., BK. No. 397-39676-SAF-11, ADV 397-3492, Apr. __, 1998 (N.D. Tex., Dallas DIV).

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June 8 restructuring election date and the July 31 next payment date for C Block licensees as set forth herein; (c) to revise interest repayment obligations to recognize that C Block Licensees were denied constructive use of their licenses from March 31, 1997 through March 24, 1998; and (d) to permit small business entities licensed in only one market, or a handful of markets, to receive some benefit in the event they elect to utilize the Commission's amnesty proposal. In support hereof, the following is respectfully shown.

I. DISCUSSION

**A. The Commission's Rules Should Be Revised
In Light of the Recent GWI Bankruptcy Ruling**

The Commission's C block auction closed nearly two years ago. (That closure came nearly three years after Congress granted the auction authority to the Commission.) Yet the PCS C Block--the only 30 MHz block of PCS spectrum dedicated to entrepreneurs pursuant to the Telecommunications Act (the "Act")^{4/}--remains largely unused. This has served to disadvantage both the public and the C Block licensees. Moreover, although there has been considerable debate with respect to why this situation has transpired, there appears to be no genuine dispute regarding the fact that the current value of the C block spectrum is much lower than it was at the time of the auction.

^{4/} The Telecommunications Act of 1934, as amended, §309(j)(4)(D); 47 U.S.C. §309(j)(4)(D).

Since the close of the auction, two of the three largest successful bidders have filed for bankruptcy.^{5/} The Commission also granted multiple parties' requests for payment deferrals in view of uncertainty surrounding the financial markets^{6/} and conducted an en banc hearing on this matter.^{7/} Apparently recognizing that the host of auctions that the Commission has conducted over the last four years has had a significant impact on the public's appetite for and valuation of spectrum, the Chairman recently urged Congress to provide the Commission with additional time during which to auction any additional spectrum.^{8/}

All of the above events pale in comparison to the recent action by a federal bankruptcy judge in the GWI proceeding. There, a federal judge ruled that the fair market value of GWI's C Block spectrum was \$166 million at the time that its licenses were granted, which amount amounts to only 16% of the nominal bid price!

The GWI ruling has had a significant impact upon C Block licensees. Those seeking access to public financing now must

^{5/} The GWI proceeding cited in n. 3, supra, and Pocket Communications, Inc. (Case No. 97-54105 ESD (N.D. MD)).

^{6/} Installment Payments for PCS Licenses, Order, 12 FCC Rcd 17325 (WTB 1997) ("Installment Payments Order").

^{7/} See, e.g., the Commission's Second Report and Order and Further Notice of Proposed Rulemaking ("Second Report and Order"), 12 FCC Rcd 16436, para. 16 (1997), where this forum is discussed.

^{8/} See, also, letter of April 23, 1998, from Chairman Kennard to various Congressional leaders requesting extension of the current August 10, 1998, time frame in which to auction certain spectrum.

respond more to questions about the worth of their C Block spectrum. Others must give a hard look to pursuing the bankruptcy option that GWI has capitalized on so successfully to date. Even those entities conceptually opposed to filing for bankruptcy must give serious consideration to this option in order to properly serve the needs of their shareholders, other principals and creditors.^{2/}

The C Block Licensees urge the Commission to revise its C Block payment restructuring options to provide all C Block licensees with an option to have their debt restructured and reduced to the same extent, and in the same manner, that GWI is able to accomplish in its bankruptcy proceeding. This will serve the public interest both by recognizing that the change in valuation acknowledged by the court in the GWI bankruptcy proceeding is applicable to other C Block licensees and by assuring that licensees who attempted to comply with their obligations to the public and to the federal government, rather than leaping precipitously into bankruptcy, will not be disadvantaged by their responsible behavior. Clearly, it will also remove much of the disadvantage imposed upon C Block licensees by virtue of the

^{2/} Contrast this current situation with that which existed at the time of the Reconsideration Order. There, Chairman Kennard explained that "liquidation is a drastic measure that imposes tremendous financial and personal costs on the debtor". Reconsideration Order, separate statement of Chairman Kennard. Based upon the federal judge's ruling in the GWI proceeding, bankruptcy may also prove to be quite beneficial.

unfavorable publicity for C Block licensees associated with the bankruptcy actions involving GWI.

B. The Commission Should Reschedule Its Election and Repayment Dates.

When the Commission revised its election date and payment date last September, it granted several months advance notice of the applicable date.^{10/} It did the same in the context of its Reconsideration Order.^{11/}

The C Block Licensees are now faced with only one month in which to make their election. Yet even at this eleventh hour, they are left without information essential to their making an informed decision. The Department of Justice ("DOJ") concurrence that appears to be necessary in order for the election date to become effective, has not yet been rendered. The Commission's Public Notice providing necessary logistical information associated with the election process has also not been issued.^{12/} Most important the C Block Licensees have not had any opportunity to assess either the business or regulatory ramifications of the recent GWI ruling.

Without all of the above information, the public interest would not be served by requiring C Block licensees to make their election. And only after a revised election date has been provided can a revised payment date be properly scheduled. Accordingly, we

^{10/} Second Report and Order, supra.

^{11/} See, Reconsideration Order at ¶ 82.

^{12/} See, Reconsideration Order at ¶ 65 where this is discussed.

urge the Commission to reschedule both dates, and to announce its rescheduling promptly.

C. The Commission's Rules Should Be Revised To Reflect that C Block Licensees Have Not Had Effective and Constructive Use of Their Licenses Over the Past Year.

Most of the C Block licenses were granted shortly after the conclusion of the auction. Yet, the licensees were licensees in name only. The most fundamental condition associated with their license, i.e., terms of debt repayment, was unresolved until March 24, 1998.

The Commission recognized, and contributed to, the uncertainty associated with the C Block licenses. This uncertainty was one of the reasons underlying the Commission's determination to suspend C Block payment obligations.^{13/} Then, unwittingly, the Commission magnified the uncertainty by extending significantly the suspension period and promulgating revised rules last September that solved only certain of the problems pending before the industry and necessitating further revision and clarification early this year.

The Commission's rules that provide for payment after grant of a license were designed only to reflect that licensees should pay for the license during the term in which they were using it. To the extent that the rules nominally trigger payment obligations to license grants, this merely reflected the fact that in a normal course licensees have an ability to utilize their licenses

^{13/} See, Installment Payments Order, supra.

immediately. In the case of the C Block Licensees, this was not the case for the reasons discussed above.

In view of the above, the C Block Licensees urge the Commission to revise its rules to eliminate an obligation to pay back interest that accrued throughout the suspension period, and provide a term for installment loan repayment that spans to ten years starting upon ruling on this and other concurrently filed petitions for reconsideration.

D. The Commission Should Provide Some Amnesty Benefit for Small Licensees.

In both the Second Report and Order and the Reconsideration Order, the Commission strived to provide multiple options to all licensees. Unfortunately, certain of the options were meaningful only to the larger PCS licensees. Specifically, larger licensees could return some spectrum, keep other spectrum and receive "credits" in one form or another in many instances.^{14/} The smallest licensees enjoyed no such options. If they return spectrum, there is little spectrum left over which credit could be given. Effectively, they were given no credit for return of spectrum.

No public interest benefit would be served by providing certain licensees with benefits for selecting amnesty while withholding those same benefits from the smallest of the C Block licensees. Nor do the C Block Licensees believe this was the intent of the Commission when it promulgated its rules.

^{14/} Reconsideration Order, at ¶¶ 34-37.

Nevertheless, in order to maintain the integrity of the Commission's rules, treat all licensees in a similar fashion and to avoid discouraging future auction investment by truly small businesses, the Commission should revise its rules as set forth below.

Where credit for amnesty cannot be utilized by small C Block licensees, by virtue of their having little or no remaining PCS licenses against which to apply such credit, those licensees should be entitled to a credit to be used in future auctions. The amount of the credit should be consistent with the levels of credit provided in the Reconsideration Order generally, and the period of time in which the credits can be used should be consistent with the repayment periods set forth in the Reconsideration Order (i.e., ten years). Implementation of this proposal will put all small businesses on an even playing field without causing the Commission to return any monies. Thus, it is both equitable and practical.

II. CONCLUSION

Wherefore, the C Block Licensees urge the Commission to revise its rules as set forth herein.

Respectfully submitted,

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